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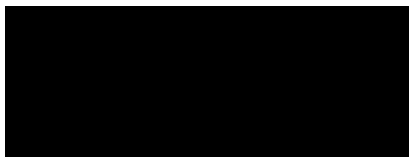
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

**U.S. Citizenship
and Immigration
Services**

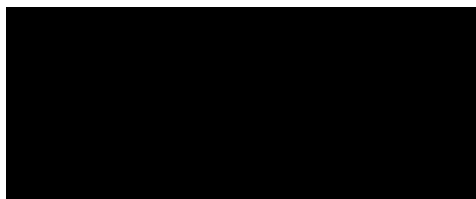


FILE: EAC 02 061 55052 Office: VERMONT SERVICE CENTER Date: **MAR 09 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

[Handwritten signature of Robert P. Wiemann]
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a manufacturer. It seeks to employ the beneficiary permanently in the United States as a cabinetmaker. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the petition's priority date is October 4, 2000. The beneficiary's salary as stated on the labor certification is \$21.00 per hour or \$43,680.00 per annum.

Counsel submitted a copy of the petitioner's 2000 Form 1120 U.S. Corporation Income Tax Return which reflected gross receipts of \$685,785; gross profit of \$345,690; compensation of officers of \$55,105; salaries and wages paid of \$0; and a taxable income before net operating loss deduction and special deductions of \$15,165.

The director determined that the evidence submitted did not establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel submits a copy of the petitioner's bank account statement for the period from February 28, 2002 through March 27, 2002 and argues that the "employer is not required to pay the prevailing wage to the alien until the alien has been granted an adjustment of status in the United States or has entered as an immigrant pursuant to the issuance of an immigrant visa to the United States."

The petitioner must show that it had the ability to pay the proffered wage as of the priority date of the petition and continuing until the beneficiary obtains lawful permanent resident status. See 8 C.F.R. § 204.5(g)(2).

Even though the petitioner submitted its commercial bank statements as evidence that it had sufficient cash flow to pay the wage, there is no evidence that the bank statements somehow reflect additional available funds that were not reflected on the tax return. Simply going on record without supporting documentary evidence is not

sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner's Form 1120 for calendar year 2000 shows a taxable income of \$15,165. The petitioner could not pay a proffered wage of \$43,680.00 a year out of this income. However, since the priority date is October 4, 2000, the petitioner must only show the ability to pay the proffered wage from that date and continuing to the present.

The proffered wage is \$43,680.00 per year or \$3,640 per month. The petitioner, therefore, would need to show that it had the ability to pay \$10,920.00 for the year 2000. The petitioner has shown that ability through its taxable income.

It is noted that at the time of the appeal, the petitioner's 2001 tax return was not available. The petitioner did provide copies of checks paid to the beneficiary (although there is no evidence that the checks were cancelled) showing payments of \$540 per week for the time period of March 16, 2002 through April 18, 2002. Since this is clearly below the proffered wage, it is expected that CIS will revisit the issue of ability to pay at the time of adjustment of status.

Accordingly, after a review of the evidence submitted, it is concluded that the petitioner has established that it had sufficient available funds to pay the salary offered as of the priority date of filing of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained.